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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

ILLINOIS PROTESTANT CHILDREN'S HOME, An Illinois Not for Profit Corporation,

Petitioner,

vs.

DEPARTMENT OF PUBLIC WELFARE OF STATE OF ILLINOIS, OTTO BETTAG, Director, CLARK MILEY, Hearing Officer,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

The Illinois Protestant Children's Home, a non-profit corporation, petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in this case on September 26, 1962.

CITATION TO OPINION BELOW.

The judgment of the Supreme Court of Illinois denying petitioners' petition for leave to appeal was not accompanied by an opinion. The judgment is attached hereto as Appendix A. The opinion of the Appellate Court of Illinois, First District, First Division, is reported at 35 Ill. App. 2d 306, 182 N.E. 2d 379, and is attached hereto as Appendix B.

JURISDICTION.

The judgment of the Supreme Court of Illinois was entered on September 26, 1962, and a timely motion to reconsider denial of the petition for leave to appeal was denied on September 28, 1962. On September 28, 1962, the Illinois Supreme Court stayed its mandate pending disposition of a petition for certiorari to this Court. On December 19, 1962, Mr. Justice Clark signed an order extending the time for filing this petition for certiorari to and including February 23, 1963.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

QUESTION PRESENTED.

Whether it is consistent with the due process clause of the Fourteenth Amendment for the Illinois Department of Public Welfare to deprive petitioner of a property right in maintaining a child welfare home almost entirely on findings of substantial evidence of failure to keep records and file reports, a ground not specified for revocation in the statute, and without the basic findings and reasoned conclusion requisite to the validity of an administrative order.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

Constitution of the United States, Amendment XIV, Section 1:

"'. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .'"

Ill. Rev. Stat. Ch. 23, Sec. 299a-1 (Smith-Hurd, 1955)

[The pertinent provisions are set out in full in Appendix C attached]

STATEMENT OF THE CASE

Background

Petitioner, a non-profit corporation under Illinois law, hereinafter referred to as the Home, has conducted a children's home in Chicago for 44 years. Since 1937, the Home has been under the supervision of Mrs. L. W. Budd, President.[1]

The Home, which was until 1956 licensed to provide care for 50 children, is located in an old mansion. The supervisor of institutions and agencies in the child welfare division of the Illinois Department of Public Welfare, as of her visit in 1953, observed that the building was "uniquely situated as a children's institution. The facility was excellent for that purpose. It came as a surprise because not often do you find a mansion for an institution like that. The plant was in very good repair. I found the conditions generally good. . . . There could be thirty-six rooms. It is a huge house, a mansion. It cost more than a million dollars so it is quite a mansion. The house had a kitchen. It had especially good fixtures." (Abst. 66-67).[2]

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[1] Among present or recent members of the Board of Directors and Board of Advisors are Dr. Adrian David H. Kraus, a specialist for 26 years and professor in pediatrics (Abst. 84), Dr. A. L. Hoyne, Professor of Pediatrics at the Chicago Medical School, and a practicing specialist in pediatrics for at least thirty years (Abst. 88-89), Richard J. Daley, who was attorney for the Home before being elected Mayor of Chicago (Abst. 91), Anthony J. Mullaney, Chicago Fire Commissioner since March 1955 (Abst. 91). Mrs. L. W. Budd has served as President of the Board of Directors and Board of Advisors for every twenty-five years without compensation.

[2] The Abstract of Record in the Supreme Court of Illinois will be designated as "Abst."

The witness testified, in addition, that the facilities were sufficient to support the number of children there, that the food was good, and the clothing generally adequate (Abst. 67). On two subsequent visits, in March 1955, and March 1956, she found the conditions in the Home "substantially the same as they were previously, including maintenance, cleanliness and sanitation," (Abst. 68-69).

For a period of years, until March 9, 1956, the Home was licensed by the Department of Public Welfare of Illinois under the provisions of Illinois law authorizing the licensing and supervision of child welfare agencies and family homes (Ill. Rev. Stat. ch. 23, Sec. 299 *et seq.* 1955).[3] In 1956, the Department notified the Home that renewal of its license which expired on March 9, 1956 would be denied. The Home thereupon requested a statement of charges and a public hearing under Section 299e of the law.

The Charges and the Hearing Officer's Decision.

The Department filed a list of twenty-seven charges. Prior to hearing, seven were withdrawn by the Department on its own motion (Abst. 21).[4]

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[3] This law was repealed by Illinois L. 1957, p. 2340, and replaced by the Child Care Act, Approved, July 10, 1957, Ill. Rev. Stat. Ch. 23, Secs. 2301-2329 (State Bar Assoc. 1961).

[4] Withdrawn were charges of the Home's failure to file certain special reports, intentional making of false records, failure to "fulfill its responsibility" to operate the Home according to standards prescribed by the Department, reliance on the work of children for maintenance, failure to have medical examinations performed on the children within 48 hours of admission, failure to keep the building in sanitary condition, intentional misrepresentation of the medical status of certain employees.

At the hearing, which began on July 23, 1956 and ended on February 27, 1957, thirty witnesses testified for the Home, and four testified on behalf of the Department.

The Hearing Officer, in a written opinion on May 14, 1957 (Abst. 15-42), concluded that thirteen of the remaining charges were not sustained but that the Home's license should be revoked upon a finding that the evidence supported seven of the remaining charges. Six of these charges, in the Hearing Officer's own words, "pertain to reports required to be made and records required to be kept by respondent" (Abst. 21).[5] The seventh charge the

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[5] Specifically, the six charges were:

"1. The agency has failed to file, within a reasonable time, certain standard reports required by law; namely, Department's forms DPW 375, 379, 380 and 408, copies of said forms being attached and made a part of these charges (Abst. 18). [DPW 375 is an admission card form for children; Form 379, a discharge card; Form 380 furnishes information as to the totals of children in the agency, the number received and discharged, etc.; Form 408 is a personnel form for employees.]

"2 to 3. The agency has failed to supply certain reports and information which were requested and required of the Agency by the Family Court of Cook County (Abst. 18).

"12. The Agency has not maintained personnel records including health reports, references and other pertinent data indicating fitness of employees to care for and work with the children (Abst. 19).

"23. The Agency intentionally misrepresented to the Department that one Estella Klopfenstein was employed as superintendent of Agency from May 1954 through and since March 9, 1955, whereas, in fact, the said Estella Klopfenstein was not so employed and on the premises throughout that period (Abst. 20).

"26. The Agency failed, within a reasonable time, to furnish the Department certain special reports requested orally March 9, 1956, and in writing on March 23rd, 1956, and April 11th, 1956 (Abst. 21).

Examiner sustained was that the Home "failed to maintain sufficient staff to supervise children adequately at all times" (Abst. 19).

Dismissed as inadequately supported by the evidence were thirteen charges. All of these dismissed charges related to maintenance of the Home in terms of physical surroundings and personal care. Thus the Examiner was unable to find that the Home (1) failed to provide proper meals and to provide for the physical needs of the children; (2) failed to have an adult responsible for and available to children at all times; (3) neglected to assign an adult to sleep with the children; (4) failed to require staff medical examinations; (5) failed to supply adequate linen and bedding to the children; (6) failed to provide adequate indoor and outdoor recreational equipment; (7) failed to make provisions for training children on personal hygiene; (8) failed to promptly treat illnesses and conditions requiring medical attention; (9) assigned children to tasks in order to get the work of the institution done; (10) employed corporal punishment and harsh treatment; (11) failed to maintain a "reputable credit status to meet and maintain minimum standards for child care"; (12) failed to provide adequate clothing for the children. As to the last three, while the Examiner found the evidence "insufficient" if the charges were considered alone, it was nevertheless in his view of "probative value" in connection with other charges in determining the question of revocation (Abst. 38).

In the concluding paragraphs of his opinion (Abst. 38-40), the Examiner adverted seriatim to the pertinent

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[3] (Continued)

"27. The Agency has failed to maintain or make available to the Department financial books and records on income and expenses of Agency so that the Department could make no assessment of the prospective stable operation of the Agency (Abst. 21)."

statutory provisions of Illinois law (Smith-Hurd, 1955) which

(a) require renewal of the license of a child welfare agency if it maintains "adequate standards of care", (Ill. Rev. Stat. Ch. 23, Sec. 299e)

(b) permit revocation if the licensee shall

"(1) substantially and wilfully violate any provisions of the license

"(2) intentionally make any false statement or report to the department; or

"(3) be no longer qualified to receive or care for children under the terms of this Act" (Sec. 299e).

(c) authorize the Family Court to refuse to commit children to an agency if it is not satisfied as to its "competence and qualifications" (Sec. 299h);

(d) require of an agency record keeping and reporting as prescribed by the Department (Sec. 299 fl, Sec. 6a);

(e) provide criminal penalties for failure to comply with the record keeping and reporting requirements as prescribed under Sec. 299 (f)(1), Sec. 6a.

He also referred to Regulation 84 of the Department, issued under the authority of Section 299b, which *inter alia*, sets out, as "Minimum Standards for Licensed Institutions," certain requirements for reports and record keeping relating to children and personnel.

The Examiner then stated, in the words of Subparagraph 3 of Section 299e, that respondent is "no longer qualified to receive or care for children under the terms of the statute" (Abst. 42). The only reasoning supplied for the statutory conclusion appears in the preceding paragraph (Abst. 40-41). After referring to "resentment for and dislike of supervision" by the Department

on the part of the President of the Home, the Examiner observed:

> "The record shows the frustrated attempts of department representatives to make and keep appointments with the president, to obtain delinquent, requested and promised reports and records and to discuss rationally complaints received as to payment of bills, clothing of the children, recreational facilities and general operation of the agency and the mutual acceptance and cooperation necessary between department and agency was totally lacking. . .
>
> "The evidence in the record makes it obvious that this attitude of defiance, resentment and dislike of supervision existent over a number of years will not subside into the spirit of cooperation and compliance which is necessary if the legislative obligations of the department and the agency are to be fulfilled with the result which is their sole object—the welfare of the children who reside there. In this situation it was a proper fulfillment of its statutory duty for the department to refuse to renew respondent's license as a child welfare agency" (Abst. 41).

On May 15, 1957, the Department of Public Welfare of Illinois adopted as its findings and decision those of the Hearing Examiner.

Subsequent Judicial Proceedings

A complaint for review under the Illinois Administrative Review Act of 1945 (Ill. Rev. Stat. Ch. 110, Sec. 264-279, State Bar Assoc. 1961) was filed on June 17, 1957 in the Circuit Court of Cook County. In pertinent part, the complaint claimed that Chapter 23, pars. 299b, 299e and 299f (1) violated the Constitution of the State of Illinois and the 14th Amendment to the United States Constitution in that the statute lacked adequate stand-

ards for guiding the administrator in determining the existence of a violation and for determining the conditions and qualifications of a license, was vague and uncertain, subjected petitioner to the arbitrary and capricious action of respondents as to what was violative of the statute, and constituted an unlawful delegation of legislative power. The complaint also attacked, on the same constitutional grounds, Regulation 84 of the Department of Public Welfare (Abst. 5-7).

On July 5, 1960, after oral argument, the Circuit Court entered an order without opinion, affirming the Department's decision.

Nearly two years later, on May 7, 1962, a three-judge Appellate Court of Illinois, First District, First Division, affirmed the Circuit Court's order (See Appendix B).

On September 26, 1962, the Supreme Court of Illinois, without opinion, denied the Home's petition for leave to appeal, and on September 28, 1962, denied a motion for reconsideration.

REASONS FOR GRANTING THE WRIT

This case raises the significant question whether a state administrative agency may, consistent with the requirements of the due process clause of the Fourteenth Amendment, deprive a child welfare home in operation and licensed for 14 years, of its right to continue operation almost entirely on findings concerning the Home's failure to produce records, a ground not specified in the statutory criterion for revocation on which the state relied and, moreover, without the clarity and precision essential to the validity of the administrative order.

More particularly, (1) may the Illinois Department of Public Welfare take away the license of a child care

agency by invoking the statutory criterion that the agency is "no longer qualified to receive or care for children . . . under the terms of the Act" when the findings in the administrative order related almost entirely to the agency's failure to keep and produce records, a failure which the statute punishes criminally but does not make a ground of revocation; (2) If the Illinois Department of Public Welfare has that authority, was the administrative order on which revocation was based, invalid for lack of essential findings and a reasoned conclusion.

The due process clause of the Fourteenth Amendment prohibits a state, including its administrative agencies, from imposing arbitrary and unreasonable burdens on the exercise of substantive rights. *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 238-39 (1957); *Ohio Bell Telephone Company* v. *Commission*, 301 U.S. 292, 304-05 (1937); *Brinkerhoff-Faris Co.* v. *Hill*, 281 U.S. 673, 680 (1929); see *Buchalter* v. *New York*, 319 U.S. 427, 429 (1943). The decision below, if unreversed, sanctions administrative agency action which revokes a valuable property right in a license on a ground which the legislature has not authorized and, in fact, has explicitly chosen to deal with in another fashion. It also sanctions denial of a license without the findings and reasoned conclusion which are essential to the validity of an administrative order.

Thus, this case touches the fundamental issue of the extent to which the due process clause insures the integrity of state administrative proceedings where deprivation of a property right is involved. This issue calls for this Court's careful review of the decision below if the Fourteenth Amendment is to play its historic role of protection against arbitrary action.

1. The lack of statutory authority to deny renewal of a license on a ground not specified in the statute.

The Hearing Examiner invoked the third of the three possible statutory criteria under 299(e) in denying renewal of the license, namely, that the Home was "no longer qualified to receive or care for children. . . ." The findings he made were almost exclusively concerned with the alleged failure[1] of the Home to provide records to the Department and to the Family Court, and to disclose personnel and financial records. Six out of the seven sustained charges pertained, as the Hearing Examiner noted, "to reports required to be made and records required to be kept by respondent" (Abst. 21). But the statute does not, specifically or by inference, make failure to supply such records a ground of revocation.

The statute at issue here did not authorize revocation of a child welfare agency license for failure to keep or produce records prescribed by the Department[2]. The legislature chose to deal with this in an another way. Under the statutory scheme, such a failure was made a criminal offense. Section 299(f)(1), Sec. 6a, Ill. Rev. Stat. Ch. 23 (Smith-Hurd, 1955) which follows 299(e) provides that:

> "Every child welfare agency or family home shall keep such records regarding each child in its control

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[1] Petitioner does not in any way concede that the findings of the Hearing Examiner are supported by substantial evidence. On the issue of record keeping, for example, the Hearing Officer ignored the evidence that representatives of the Department of Public Welfare saw and examined records at the Home on March 9, 1956, and based his findings upon secondary evidence (Abst. 72, 99-103). On other findings, he relied on the testimony of a disgruntled employee who admittedly lied (Abst. 58-59) and on hearsay (Abst. 20).

[2] The pertinent provisions of the Illinois Statute are set forth in Appendix C.

> and care as the Department may prescribe and shall report to the Department, whenever called for, upon forms prescribed by the Department, such facts as it may require with reference to such children."

Section 299(k), "Penalties," makes it a misdemeanor (punishable by fine of from $100 to $1,000 or imprisonment for not more than one year, or both), if a licensee "fails to keep the records and make the reports provided for in Section 6a" of the Act. So far as the Family Court is concerned, failure to file "whatever reports and information the court shall desire" within ten days after such request is made ground for the Court's refusal to commit children to the agency, or to transfer children to another agency. Section 299(h). It is plain that the legislature intended to provide and did provide specific and exclusive penalties for failure to keep records regarding children and to produce forms required by the Department, or to file reports and information with the Family Court. In neither case was the penalty license revocation.

Nor do other sections of the statute suggest in any way that record keeping can be taken into account. Section 299(b), dealing with initial licenses, provided that the Department may license an agency if "upon . . . examination" the Department is satisfied as to the "qualifications and standards of care of the applicant." Here again, there is no mention of record keeping requirements. Likewise, Section 299(c) authorized "renewal" of a license if upon examination the Department finds the "agency" to be maintaining "adequate standards of care." Again there is no intimation that the "adequate standards of care" upon which renewal depends encompasses record keeping. Thus the entire statutory scheme, as well as the absence of any specific reference to record production as a ground for revocation, demonstrates that the Department was

not authorized to treat the Home's alleged failure in this area as the basis for the statutory determination that the Home was "no longer qualified to receive or care for children under the terms of the Act."[1]

Had the Illinois legislature intended to make record-keeping and production a condition of obtaining or a ground for revoking a license, it could easily have done so. In fact, the legislature did just that on July 10, 1957, just two months after the Hearing Officer issued his decision. The Illinois Child Care Act now provides that the Department may "revoke or refuse to renew the license of a child care facility" should the licensee

> "refuse to submit to the Department any reports or refuse to make available to the Department any records required by it in making investigation of the facility for licensing purposes." Section 19(4), Ill. Rev. Stats. Ch. 23, Sec. 2319(4) (State Bar Assoc. 1961)

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[1] The Department was given authority under Section 299(b) to prescribe and publish "minimum standards." The section does not define the term nor does it refer to record keeping. Departmental Regulation 84, bearing the title "Minimum Standards for Licensed Institutions for Child Care" (Abst. 44-45), purports to be issued under authority of this section. Regulation 84 required record keeping with respect to personnel, and reports and records as to children in an agency, including ledgers, master files, etc. But, as pointed out, the Department's statutory authority to require such records and reports on agency children as the Department may prescribe is conferred specifically by Section 299(f)(1), Section 6(a) of the statute, the penalty for violation of which is criminal, and not by Section 299(b). In view of this, the Department cannot seek to justify its Regulation 84 record keeping requirements as a valid exercise of its 299(b) power to publish "minimum standards." Certainly, the Department cannot, by the issuance of regulations, confer upon itself powers not granted by the basic statute and, indeed, in conflict to the structure and the remedies provided by the statute itself.

Moreover, in dealing with initial licenses, Section 17 of this statute reads:

> "Such examination of the facility shall include an examination of such records of the facility as the Department deems necessary to determine the standards of care provided children served by the facilities." *Ibid.*, Sec. 2317.

There can be no more compelling evidence of the gap in the earlier statute.

Finally, the vagueness of the statutory criterion—"no longer qualified to receive or care for children"—is its vice. There is no warning that failure to produce records is an ingredient, and consequently the order runs afoul of the due process prohibition against punishing violations of regulatory provisions which are too vague and indefinite to afford an ascertainable standard of conduct. See *Champlin Refining Co.* v. *Commission*, 286 U.S. 210, 242-43 (1932).

2. The invalidity of the administrative order depriving the Home of its license.

Even if the statutory standard on which the Department relied could be deemed to encompass a failure to keep and produce records, the administrative order on which the decision below was based is invalid for lack of basic and ultimate findings clearly and rationally related to the statutory conclusion that petitioner was no longer qualified to care for children.

This court's opinion in *Securities and Exchange Commission* v. *Chenery*, 318 U.S. 80 (1943), setting forth the essentials for a valid administrative order, required that the agency clearly disclose and adequately sustain the grounds on which it acted, and emphasized that the valid-

ity of the order depends upon those grounds. See also, *Secretary of Agriculture* v. *United States*, 347 U.S. 645, 652-54 (1954). This Court has "repeatedly emphasized the need for clarity and completeness in the basic or essential findings on which administrative orders rest. . . ." *Colorado-Wyoming Gas Co.* v. *Federal Power Commission*, 324 U.S. 626 (1945); *Mahler* v. *Eby*, 264 U.S. 32, 44-45 (1924). It is a fundamental of "fair play" that an administrative judgment express a "reasoned conclusion." *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 144-45 (1940). So important has this Court deemed the "findings" requirement to the integrity of administrative proceedings that it has intervened to insure its observance in state proceedings. *Wichita Railroad and Light Co.* v. *Public Utilities of Kansas*, 260 U.S. 48 (1922); see also *Ohio Bell Telephone Co.* v. *Commission*, 301 U.S. 292 (1937), reversing as a denial of due process a state public utility order for procedural unfairness. The considerations warranting this Court's intervention are equally compelling here. Adherence to the fundamentals required of administrative orders was of special importance here, since the effect of the order was to terminate a children's home in operation for 44 years, and since the great preponderance of charges against the Home were either withdrawn or found to be inadequate after Hearing.[1] These were, moreover,

[1] There is no question as to the adequacy of the physical facilities, as counsel for the Department of Welfare conceded, and the Hearing Officer observed (Abst. 67, 58). In addition, 30 witnesses testified to the overall suitability of the Home. Judge Frank H. Bicek of the Circuit Court, said that he served at the Family Court from 1933 to 1948, and that on every occasion when he placed children in the Home he was satisfied the Home was proper and acceptable for placing children (Abst. 101). Judge Joseph A. Power of the Municipal Court of Chicago said his law firm, Daley and

the serious ones. While the Hearing Officer did not make affirmative findings, since he was only concerned with the deficiencies in the Home, a profile of a property maintained and supervised children's home can be sketched from an examination of the charges which were either found inadequate or dismissed. The fair inference is that this is a home which provides proper meals and cares for the physical needs of the children. It has an adult responsible for and available to children at all times, and has assigned an adult to sleep or be on the same floor of the building where children are quartered. It has required complete medical examinations for each staff member or voluntary helper at the time of employment, and annually thereafter. It has kept the building in clean and sanitary condition at all times. It has provided adequate outdoor and indoor equipment for play, recreation and hobby interest. It has made adequate provision for training children in and maintaining proper habits of personal hygiene. (See charges withdrawn or found to be inadequate (Abst. 18-19, 21, 38). The Hearing Officer also recognized the record of hostility between the Home and the Welfare Department, and the long hearing, with

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[1] (Continued)
Lynch, once represented the Home and he would be free to recommend the Home (Abst. 93). Dr. A. L. Hoyne, a pediatrics specialist and a member of the Advisory Board, testified that he could not imagine any place that would be superior to the Home as a fit and proper place for the rearing of children (Abst. 88). Dr. Adrian David Kraus, a pediatrics specialist who teaches at the Stritch School of Medicine and who is also a member of the Board of Directors, testified that in his opinion, the Home is the finest of its kind he had ever seen (Abst. 85). Dr. Herman Bundesen, President of Board of Health of Chicago, said "the response of the children and their love, kindness and things of that kind, they all seemed to be happy and well-fed" (Abst. 90). Thomas Crocker, Senior Captain, Salvation Army, testified that Mrs. Budd is doing a fine job out there with the children (Abst. 94).

a transcript of 2874 pages, evidenced the intensive effort on the part of the Department to justify its lack of renewal of the license. Its failure, however, to sustain charges on every significant measure of a well-run children's home makes it imperative that the findings on which the Hearing Officer relied be clearly and unequivocally related to the statutory criteria in order to justify the drastic remedy of refusal to renew its license.

The refusal to renew the license was related solely to the third ground under Section 299—that the Home was "no longer qualified to receive or care for children." Do findings of failure to file reports with and to maintain personnel and financial records for the Department, and to supply reports to the Family Court, demonstrate that the Home is not qualified to care for children? The Examiner does not expressly say, and such a critical finding cannot be supplied by implication. It would, indeed, be difficult to find a rational basis for concluding without more that record keeping deficiencies were critical to the quality of care. Everything in this record, including the charges dismissed by the Examiner, suggests that in terms of physical facilities and personal care, the Home was fully qualified. But even if adequate explanation could be provided, what is crucial is that it was not provided here. Nor did the Examiner explain the extent to which this factor weighed in the decision.[1]

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[1] The Hearing Officer treated the charge of intentional misrepresentation of the length of employment of one Estella Klopfenstein as one "pertaining to reports required to be made and records required to be kept by respondent" (Abst. 21). Denial of the license renewal was based not on Section 299(e)(2) relating to intentional false statements. In fact, he found a more general charge of intentional misrepresentation was not sustained by the evidence (Abst. 20, 25). Instead, he relied solely on Section 299(e)(3), that the Home

The absence of an adequate rationale to support the statutory conclusion is not in any way supplied by the charge sustained by the Hearing Officer, that the Home had failed to maintain sufficient staff to supervise children adequately at all times (Abst. 34). There is no attempt to weigh this charge, to say whether it would stand alone to support revocation, or to assess its significance in light of the other findings. This is of particular importance since the charge is inconsistent in certain respects with two dismissed charges. One of these was that the Home "failed to have an adult responsible for and available to children at all times."[1] (Abst. 18, 38). Moreover, the primary emphasis in the sustained charges, and the import of the concluding discussion of the Order, is that the Department's complaint of lack of cooperation between Home and Department resulted from the failure to produce records. In view of this, failure of the Hearing Officer to evaluate the staffing charge in light of the other charges is critical. In any event, since he has not said that this

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[1] (Continued)
was "no longer qualified to receive or care for children under the terms of the statute." Consequently, the validity of the alleged misrepresentation finding depends on whether failure to keep proper records is a proper basis for refusing to renew a license under Section 299(e)(3). It cannot now serve as an independent basis under 299(c)(2) to validate refusal to renew the license, since the order must be judged on the grounds in which the agency relied. Moreover, the Department has not made ultimate findings based on 299 (e)(2) nor supporting basic findings providing a clear, complete and convincing rationale relating the evidence to that statutory criterion. **Securities & Exchange Commission v. Chenery**, 318 U.S. 80 (1943); **Colorado-Wyoming Gas Co. v. Federal Power Commission**, 324 U.S. 626 (1945).

[1] The other charge dismissed as inadequately supported was that the Home had not "at all times assigned an adult to sleep or be on the same floor of the building where the children are quartered" (Abst. 19, 38).

charges would stand alone as a basis for revocation, it cannot now be made to do so.[1]

The absence in the administrative order of the requisite precision and clarity explaining the legal basis for revocation violates the fundamental principles established by the *Chenery* case and its followers in this Court. This Court should apply these principles to the state proceedings below in view of the fact that deprivation of a valuable property right is at stake.

Conclusion.

The decision below, if left unreversed, would ban the operation of a Home that has been caring for children for forty years. In order that such a drastic remedy be employed only in conformity with the rigorous requirements of the due process clause prohibiting arbitrary action in

[1] As the Court stated in **Atchison T. & S.F.R. Co. v. United States**, 295 U.S. 193, 201 (1935):

> "This court will not search the record to ascertain whether, by use of what there may be found, general and ambiguous statements in the report intended to serve as findings may by construction be given a meaning sufficiently definite and certain to constitute a valid basis for the order. In the absence of a finding of essential basic facts, the order cannot be sustained. . . . Recently this court has repelled the suggestion that lack of express finding by an administrative agency may be supplied by implication. **Panama Refining Co. v. Ryan**, 293 U.S. 388.

state administrative proceedings, this petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Illinois should be granted.

Respectfully submitted,

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February 23, 1963

APPENDIX.

APPENDIX A.

UNITED STATES OF AMERICA

State of Illinois }
Supreme Court } ss.

At A Term Of The Supreme Court, begun and held in Springfield, on Monday, the tenth day of September in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Roy J. Solfisburg, Jr., Chief Justice

Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Harry B. Hershey — Justice Ray I. Klingbiel
Justice Byron O. House — Justice Robert C. Underwood

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 26th day of September 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to wit:

Illinois Protestant Children's Hon., an Illinois Not for Profit Corporation, Petitioner vs. Department of Public Welfare of State of Illinois, Otto Bettag, Director, Clark Miley, Hearing Officer, Respondents	Petition for Leave to Appeal from Appellate Court First District 57 C 8855 48312

No. 37349

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioner costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searey, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this day of , 19

Clerk,

Supreme Court of Illinois

And afterwards, to-wit: on the 27th day of September, A.D. 1962; the same being one of the days of the Term of Court aforesaid, there was filed in the Office of the Clerk of the Supreme Court a motion by petitioner for reconsideration of order denying petition for leave to appeal, or, in the alternative, that the mandate be stayed pending disposition of petition for writ of certiorari in the Supreme Court of the United States, said motions being in the words and figures following, to-wit:

APPENDIX B.

OPINION OF THE APPELLATE COURT

MR. JUSTICE BURMAN DELIVERED THE OPINION OF THE COURT.

Plaintiff, the Illinois Protestant Children's Home (hereinafter referred to as the Home), appeals from a judgment order of the Circuit Court affirming the findings and decision of the Department of Public Welfare which denied the renewal of plaintiff's license to operate as a child welfare agency.

This matter originated with the Department's issuance of notice to the Home, in accordance with §299 of "an Act to provide for the licensing and supervision of child welfare agencies and family homes. . . ." [Ill. Rev. Stat. ch. 23, §299 (1955)], that the Home's license which expired on March 9, 1956, would not be renewed. The Home subsequently requested from the Department a statement of charges and a public hearing, to which it is entitled under §299(e). The Department complied, furnishing the Home with a written statement of twenty-seven charges. Extensive public hearings, with Clark Miley as the hearing officer, were conducted during 1956 and early 1957. With the Department introducing four witnesses and the Home thirty, the transcribed evidence (including numerous exhibits) consisted of 2874 pages. At the conclusion the hearing officer recommended that the Home's license not be renewed, which recommendation was adopted by the Department.

As authorized in the Administrative Review Act the Home filed a complaint in the Circuit Court and received

a hearing focused upon the record of proceedings before the Department. [Ill. Rev. Stat. ch. 110, §§ 265, 274 (1955)]. On July 5, 1960, the Circuit Court entered an order which, after reciting that the court reviewed all the proceedings before the Department and heard oral argument, affirmed the Department's decision.

The Home contends that the findings and conclusions of the Department and the Circuit Court are against the manifest weight of the evidence. In entertaining this question it is important that we describe our precise function as a reviewing court. Section 11 of the Administrative Review Act [Ill. Rev. Stat. ch. 110, §274 (1955)] provides: "the findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." In *Parker* v. *Department of Registration and Education*, 5 Ill. 2d 288, 294, the effect of the statutory presumption was thus explained: "the court has a judicial function comparable to the issue at law as to whether there is competent evidence to support a judgment of a lower court. *Harrison* v. *Civil Service Comm.*, 1 Ill. 2d 137." In accordance with this directive we turn to an examination of the record.

The Home, an Illinois Corporation not-for-profit, is located at 5017 Ellis Avenue, Chicago. It has been licensed during the entire period that the State Licensing Act has been in effect. Mrs. L. W. Budd, president of the Home since 1928, was present during the hearings before the Department and was represented by counsel. The record reveals that the Department withdrew on its own motion seven of the charges filed in the written statement. The hearing officer determined that seven of the charges were sustained by the evidence, that evidence insufficient to sustain three additional charges nevertheless carried probative value upon the ultimate question of revocation, and

that the remaining ten charges should be dismissed. Briefly summarized, the sustained charges reveal that the Home failed to file with the Department within a reasonable time standard reports required by law and certain special reports orally requested by the Departmnt; that it failed to file reports and information required by the Family Court of Cook County; that it failed to maintain a staff sufficient to supervise the children adequately at all times; and that it failed to maintain personnel records which would indicate employee fitness, and financial records necessary for the Department's appraisal of prospective stability of operations.

We think it significant to note that the entire Act governing licensing and supervision of child welfare agencies imports a liberal delegation of authority, discretion and responsibility to the Department of Public Welfare. The provisions of that Act [Ill. Rev. Stat. ch. 23, §299 (1955)] here involved read:

> (b) . . . .
>
> The Department shall prescribe and publish minimum standards for the licensing of agencies and homes under this Act.
>
> (e) The Department may revoke or refuse to renew any license of a child welfare agency or family home in case the licensee shall:
>
> (1) substantially and wilfully violate any provisions of such license;
>
> (2) intentionally make any false statement or report to the department; or
>
> (3) be no longer qualified to receive or care for children under the terms of this act.
>
> (f) Every child welfare agency or family home shall keep such records regarding each child in its control and care as the Department may prescribe and shall

report to the Department, whenever called for, upon forms prescribed by the Department such facts as it may require with reference to such children. . . .

Nora E. English, supervisor of institutions and agencies in the child welfare division of the Department, testified that although she had recommended renewal of the Home's license for the years 1953, 1954 and 1955, she refused to do so for the year 1956. Explaining that routine reports concerning children received and discharged are required to be filed by the Home, she testified that from May to October, 1955, such reports were not filed despite numerous reminders and requests from the Department, and that when the Home finally submitted the reports after being prompted by her personal visit on March 9, 1956, the forms were only half completed. Thereafter, reports for the months beginning with February, 1956, again were not filed.

Miss English also stated that on her visit of March 9, 1956, she made an oral request, followed by a written request dated March 23, 1956, that the Home file special reports concerning (1) all employees who had left the Home's employment between March 9, 1955, and March 9, 1956; (2) medical examinations for certain employees; (3) financial records and credit details; (4) dental records on the children; and (5) records relating to child histories, family backgrounds, and school records. Only the report on medical examinations was shown to Miss English at the time of the visit, and none of the special reports was subsequently filed in accordance with the Department's request.

There was evidence indicating that the Home failed to submit to the Department a complete and accurate listing of its Board of Directors, and that for several years three

names had been erroneously included as members of the Board. It also appeared that the Home failed to maintain properly a bound ledger listing all the children under its care. Such ledger is required to be kept on the premises of the Home at all times for departmental inspection. Miss English testified that the ledger was never produced for her inspection.

In support of the charge relating to the adequacy of the Home's staff Miss English testified that, based upon her study of the situation, there was insufficient staff coverage of the children from March 9, 1955, to the time of refusal to renew the Home's license. In a lengthy letter to the Department Mrs. Budd, president of the Home, stated: "We have been understaffed from time to time. We have had difficulty filling our vacant positions. Who hasn't these days. . . ."

In 1955 the Family Court, to determine whether the Home was satisfactorily operated, ordered all probation officers to review cases committed to the Home. That review indicating a reasonable basis for inquiry, Judge Clayton of the Family Court thereupon ordered Miss Jeanne Hurley, an Assistant State's Attorney, to devote two weeks to an investigation of the Home. Miss Hurley submitted her report to Judge Harold O'Connell, the presiding Family Court Judge, and in September, 1955, all of the Family Court wards were removed from the Home and placed elsewhere.

Mrs. Budd, testifying on behalf of the Home, explained the failure to file admission and dismissal cards on the ground that, in her opinion, during months when there were no admissions or dismissals there was no need to file reports. With regard to some of the other reports, she stated that careful records are kept by the Family

Court and whatever information the Department desired could have been obtained from that source. She testified that Miss English's visit on March 9, 1956, lasted for almost three hours, and that all the desired information was made available. Mrs. Budd suggested further that it was unnecessary for the Home to repeat facts and information which the Department could have derived from previous reports. In some instances, she added, the addresses of children at the Home were not reported because "the parents called and said not to give the address to the State."

We could extend this opinion with a discussion of further evidence and peripheral issues. However, that seems to us unnecessary. We are of the view that there was substantial evidence to support the findings of the hearing officer that,

> The record in these hearings shows a desire on the part of the department to carry out and fulfill the department's obligation under the statute and shows a desire on the part of respondent [the Home] not to carry out and fulfill the obligations of respondent under the statute. There is evident on the part of the president of respondent a resentment for and a dislike of supervision by the department (and by the Juvenile Home) not only in the fiscal year primarily involved here but over a period of recent years. . . .

Clearly the findings and decision of the Department of Public Welfare are not against the manifest weight of the evidence. The judgment of the Circuit Court is therefore affirmed.

AFFIRMED.

MURPHY, *P. J.* and
ENGLISH, *J.* concur.

APPENDIX C.

Pertinent Provision of 1933 Illinois Act to Provide for Licensing and Supervision of Child Welfare Agencies (Ill. Rev. Stat. Ch. 23, Smith-Hurd, 1955)

"299a. Definitions.] § 1. For the purpose of this Act:

'Child welfare agency' means any person or any institution, whether public or private, incorporated or unincorporated, receiving with or without transfer of custody, one or more children not related to such person unattended by parent or guardian, for the purpose of providing such children with care and maintenance, part time or all the time, or of placing them in family homes, whether for gain or otherwise . . ."

"299b. License required for child welfare agency or family home.] § 2. No person shall act as a child welfare agency or conduct a family home without a license. Provided, that a license issued to a child welfare agency shall also include all family homes supervised and used by the agency as part of its work. Application for license shall be made to the department upon blanks furnished by it. Upon receipt of the application in proper form, the department shall examine the agency or home making application, or in the case of a family home may designate a duly licensed child welfare agency or other suitable agency or person to make such examination. If the department upon such examination, shall be satisfied as to the qualifications and standards of care of the applicant, it shall issue to the applicant a license to act as a child welfare agency or family home for one year. Such license shall be issued in the manner and form prescribed by the department.

"The Department shall prescribe and publish minimum standards for the licensing of agencies and homes under this Act."

"299c. Examination of agency or home.] § 3. The Department shall annually examine every child welfare agency and family home in the State for which a license is required by this Act, but in the case of a family home such examination may be made by a duly licensed child welfare agency or other suitable agency or person designated by the department as its agent for that purpose. If upon examination the department finds than an agency or home is maintaining adequate standards of care, it shall renew the license of such agency or home. No license shall be renewed without such an examination . . ."

"299e. Revocation or refusal to renew license.] § 5. The department may revoke or refuse to renew any license of a child welfare agency or family home in case the license shall:

"(1) substantially and wilfully violate any provisions of such license;

"(2) intentionally make any false statement or report to the department; or

"(3) be no longer qualified to receive or care for children under the terms of this Act.

"Prior to such revocation, the department shall deliver in person or by registered mail, postage prepaid, to the licensee at the address specified on the license, notification that the license is to be revoked or renewal denied and that the licensee may within 10 days after receipt of such notification request in writing a public hearing and at the same time request a written statement of charges from the department. It shall be the duty of the department to furnish such written statement of charges and to hold a public hearing, upon such request, and the hearing shall be set not later than 30 days after the department has received

a written request for a hearing, or in case a written statement of charges shall have been requested, not later than 30 days after the department has delivered the written statement of charges. The department shall give notice of the time and place for hearing in the same manner as provided above, at least 20 days in advance of the date set for the hearing. If no request for a hearing is made within 10 days after notification has been delivered, or if the department shall determine upon holding a hearing that the license should be revoked or renewal denied, then the license shall be revoked or renewal denied, as the case may be."

"299f1. Records of child welfare agency or family home.] § 6a. Every child welfare agency or family shall keep such records regarding each child, in its control or care as the Department may prescribe and shall report to the Department, such facts as it may require with reference to such children. All records regarding children and all facts learned about children and their parents or relatives shall be deemed confidential by the agency or home and by the Department."

"299h. Commitment of children by court.] § 8. Any court of competent jurisdiction may at any time require from any child welfare agency which desires to receive children under 'An Act relating to children who are now or may hereafter become dependent, neglected or delinquent, to define these terms, and to provide for the treatment, control, maintenance, adoption and guardianship of the persons of such children,' approved April 21, 1899, as amended, or any Act intended as a substitute therefor, or to which such court has already committed one or more children, whatever reports and information the court shall desire. It shall be the duty of such agency to return a full, true and complete report within ten

days after such request, which shall be either in writing verified by affidavit, or under oath in open court or otherwise as the court shall direct. Upon hearing such evidence the court, if not satisfied as to the competence and qualifications of the agency, may refuse to commit children thereto in the future, or it may transfer from its custody to that of another agency, or its parents or other guardian any child or children which the court had previously committed thereto."

"299i-1. Judicial review of administrative decisions.] § 9a. The provisions of the 'Administrative Review Act', enacted by the 64th General Assembly, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department hereunder. The term 'administrative decision' is defined as in Section 1 of said 'Administrative Review Act.'"

"299k. Penalties.] § 11. Whoever

"1. acts as a child welfare agency or family home without a license so to do in violation of Section 2;

"2. makes materially false statements in order to obtain a license;

"3. issues a licens without authority;

"4. fails to keep the records and make the reports provided for in Section 6a or Section 10a of this act;

"5. advertises any service not authorized by license held;

"6. brings or sends into or receives within this State any child in violation of Section 10a of this act;

"7. publishes or causes to be published any advertisement in violation of Section 10b; or

"8. violates any other provision of this act or any reasonable rule or regulation adopted by the department for the enforcement of the provisions of this act; is guilty of a misdemeanor, and shall be fined not less than $100, nor more than $1,000, or be imprisoned in the county jail not longer than one year, or be both fined and imprisoned, and such term of imprisonment in case of an association or corporation may be imposed upon its officers who participated in such violation."

Office-Supreme Court, U.S.
FILED
MAR 2 0 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

NO. 860

ILLINOIS PROTESTANT CHILDREN'S HOME, An Illinois Not For Profit Corporation,

Petitioner,

vs.

DEPARTMENT OF PUBLIC WELFARE OF STATE OF ILLINOIS, OTTO BETTAG, Director, CLARK MILEY, Hearing Officer,

Respondents.

(PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.)

BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

NO. 860

ILLINOIS PROTESTANT CHILDREN'S HOME, An Illinois Not For Profit Corporation,

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vs.

DEPARTMENT OF PUBLIC WELFARE OF STATE OF ILLINOIS, OTTO BETTAG, Director, CLARK MILEY, Hearing Officer,

Respondents.

(PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.)

BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR CERTIORARI.

JURISDICTIONAL QUESTION PRESENTED.

DID PETITIONER NOT ONLY FAIL TO PRESERVE BUT WAIVE ITS ALLEGED CONSTITUTIONAL QUESTIONS BY TAKING ITS APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY, NOT DIRECTLY TO THE SUPREME COURT OF ILLINOIS BUT TO THAT STATE'S APPELLATE COURT FOR THE FIRST DISTRICT IN VIEW OF ILLINOIS' RULE OF APPELLATE JUDICATURE, CONSISTENTLY RECOGNIZED BY THIS COURT IN CASES COMING TO IT FROM ILLINOIS, THAT THE FAILURE TO TAKE ILLINOIS' PERMISSIBLE DIRECT APPEAL TO HER SUPREME COURT WAIVES ALL STATE AND FEDERAL CONSTITUTIONAL QUESTIONS?

ARGUMENT.

I.

Illinois has always permitted direct appeals from trial courts to her Supreme Court where substantial Federal or State constitutional questions are involved and has always held that an appeal to the Appellate Court in such cases, although permissible, waives all constitutional questions. This Court has always recognized this principle of Illinois' judicature as a bar to appeal or certiorari. Therefore there is no jurisdiction to review this case on certiorari.

Illinois permits direct appeals from her trial court to her Supreme Court in cases involving a construction of the Federal or her own Constitution, either as applied to a statute generally or in constitutional focus on the facts of a particular case.

Alternatively, Illinois permits appeals to her Appellate Courts where constitutional questions are presented but consistently rules that where appeals to those Courts are taken, all constitutional questions are waived.

This Court has *invariably* denied or dismissed *certiorari* and has always dismissed appeals or its former writs of error in cases where an Illinois litigant took his appeal, not directly to the Supreme Court of Illinois but to an Appellate Court, and that fact has been called to this Court's attention as a waiver of all constitutional questions and a consequent bar to this Court's jurisdiction.

Parker v. Illinois, 333 U. S. 571.

In the *Parker* case, 333 U. S. 571, this Court granted *certiorari* to review a substantial question as to whether Parker, who had been ordered by an Illinois Circuit Court to produce certain records and had then been held in contempt for filing them with the clerk when they proved or were deemed to be scandalous, was thereby denied due process of law. 332 U. S. 845.

But on plenary consideration, it was called to the Court's attention that petitioner had taken his appeal, not directly to the Supreme Court of Illinois but to the Appellate Court of that State.

The Court, holding that Parker's appeal to Illinois' Appellate Court waived his otherwise presumably substantial Federal constitutional question, said at pages 574-75:

> "When federal rights are involved, it is, of course, for this Court finally to determine whether the failure to follow the procedure designed by a State for their protection constitutes a waiver of them. *Davis* v. *O'Hara*, 266 U. S. 314; *Central Union Co.* v. *Edwardsville*, *supra*. The Court said in the *Edwardsville* case that when the waiver is found on a failure to comply with the appellate practice of a State, the question turns on whether that practice gives litigants 'a reasonable opportunity to have the issue as to the claimed right heard and determined' by the state court. 269 U. S., pp. 194-195. It was there held that the Illinois practice of requiring constitutional questions to be taken directly to the Illinois Supreme Court and of refusing to review them if review was first sought in the Appellate Court satisfied the requirement. We adhere to that decision. The channel through which the constitutional questions, raised by petitioner in his attack on the amended order, could not have been taken

all the way to this Court was not only clearly marked, it was also open and unobstructed."

Similarly, in *Central Union Co.* v. *Edwardsville*, 296 U. S. 190 and *Penn. R. Co.* v. *Illinois Brick Co.*, 297 U. S. 447 this Court, having taken those cases for review, perceived on full argument, that petitioners ere had taken their cases, not directly to the Supreme Court of Illinois but to that State's Appellate Courts, recognized that under Illinois' principles of judicature such appeal waived all Federal constitutional questions and dismissed the cases for want of jurisdiction.

We submit that a like result must follow in this case.

II.

Even if this Court has jurisdiction to grant certiorari, the writ should be denied for want of merit and lack of national moment.

This case presents only a question whether Illinois' administrative and judicial tribunals correctly or erroneously assayed the weight of conflicting evidence and assessed the competitive merits of contrary inferences to be drawn from that evidence.

For vindication of the decisions of those State tribunals upon the merits of the questions presented, we adopt the opinion of the Appellate Court of Illinois.

In any event no question of moment to the national jurisprudence is tendered by this petition.

For these reasons the writ should be denied if this petition is not to be dismissed for want of jurisdiction, as we submit that it must be.

Respectfully submitted,

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Office Supreme Court, U.S.
FILED
JOHN F. DAVIS, CLERK

No. 860

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

ILLINOIS PROTESTANT CHILDREN'S HOME, An Illinois Not for Profit Corporation, *Petitioner*,

v.

DEPARTMENT OF PUBLIC WELFARE OF STATE OF ILLINOIS, OTTO BETTAG, Director, CLARK MILEY, Hearing Officer, *Respondents*.

Petition for Writ of Certiorari to the Supreme Court of the State of Illinois

REPLY BRIEF

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March 27, 1963

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 860

ILLINOIS PROTESTANT CHILDREN'S HOME, An Illinois Not for Profit Corporation, *Petitioner,*

v.

DEPARTMENT OF PUBLIC WELFARE OF STATE OF ILLINOIS, OTTO BETTAG, Director, CLARK MILEY, Hearing Officer, *Respondents.*

Petition for Writ of Certiorari to the Supreme Court of the State of Illinois

REPLY BRIEF

Respondents' cursory treatment of the merits (Opposition to Petition, pages 4-5) misunderstands the issue petitioner presented, and utterly fails to demonstrate the validity of the decision below or the reasons why this case does not warrant review.

The issue is not, as respondents would have it, a resolution of conflicting evidence before an administrative tribunal. It is whether the Illinois Department of Public Welfare lacked statutory authority to revoke a license of a child welfare agency when its findings related almost entirely to an alleged failure to

keep records and file reports, a failure which the statute does not make a ground for revocation and in fact makes punishable criminally. Just as "state factual determinations not fairly supported by the record cannot be conclusive of federal rights", *Townsend* v. *Sain*, 31 U. S. Law Week 4297, 4304 (March 19, 1963), so neither can state determinations not authorized by state law be conclusive of federal rights. By sanctioning so harsh a result as license revocation on an impermissible ground, the decision of the Court below violated fundamental legal principles and raised a substantial due process question. Respondents' failure to address themselves to this issue bespeaks the soundness of petitioner's contention as forcefully as the action of the 1957 Illinois Legislature in hastily adding to the statutory grounds for revocation, after the Hearing Examiner's decision, the very ground upon which he relied without such statutory authority—namely, refusal to submit reports and records.

Parker v. *Illinois*, 333 U.S. 571 (1948) does not preclude this Court from exercising its certiorari jurisdiction here. Petitioner here is not raising the type of constitutional issue of which the Supreme Court of Illinois had jurisdiction on direct appeal, and thus the *Parker* rule is inapplicable. In civil cases, the Illinois Supreme Court has consistently held that direct appeal on a constitutional issue is limited to cases where the constitutional validity of the statute is challenged. In cases where the constitutional issue related to the application of the statute in an unconstitutional manner, the appeal lies to the Appellate Court. *Biggs* v. *Plebanek*, 407 Ill. 562, 95 N.E. 2d 870 (1950); *Maupin* v. *Maupin*, 403 Ill. 316, 86 N.E. 2d 206 (1949); *Ernhart* v. *Elgin, Joliet and Eastern Railway Company*, 339 Ill.

512, 78 N.E. 2d 257 (1948). Obviously, since appeal thereon such a constitutional question is permitted, no waiver of that question can be found. Moreover, where "a question of fact is involved even though the validity of a statute is questioned, no direct appeal may be taken" to the Illinois Supreme Court. *Foertsch* v. *Fox*, 402 Ill. 447, 84 N.E. 2d 388. Here petitioner is not challenging the validity of the statute as such, but its application in an unconstitutional manner. It is urging a violation of due process because the state administrative agency erred in acting outside the proper scope of its statutory authority to deprive a child welfare agency, in operation for 44 years, of its license.

For the foregoing reasons, and for the reasons set forth in the Petition, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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March 27, 1963